



04 FEB 2008

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In re Application of :
JACOTOT et al. :
Application No.: 10/533,642 :
PCT No.: PCT/EP03/12056 :
Int. Filing Date: 02 October 2003 : DECISION ON PETITION
Priority Date: 02 October 2002 :
Attorney Docket No.: 1721-90 :
For: METHOD FOR SCREENING :
MODULATORS OF MITOCHONDRIAL :
FUNCTIONING AND NEW :
MODULATORS OBTAINED :

This decision is issued in response to applicants' "Renewed Petition under 37 CFR 1.47" filed 08 January 2008 to accept the application without the signature of joint-inventor, Dominique Rebouillat.

BACKGROUND

On 02 October 2003, applicants filed international application PCT/EP03/12056 which claimed a priority date of 02 October 2002. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 02 April 2005.

On 03 May 2005, applicants filed a transmittal letter for entry into the national stage in the United States for international application PCT/EP03/12056, which included, among other materials: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a preliminary amendment; and a petition to revive the international application. The international application was revived pursuant to 37 CFR 1.137(b) in a "Decision on Petition" dated 24 August 2006.

On 06 March 2007, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. Furthermore, the Notification indicated that a Sequence Listing had not been filed as required by 37 CFR 1.821(c) and (e). The notification set a two-month time limit in which to respond. The notification set a two-month time limit in which to respond.

On 05 October 2007, applicants filed a petition under 37 CFR 1.47(a). In a decision mailed 08 November 2007, applicants' petition was dismissed without prejudice.

On 08 January 2008, applicants filed the present renewed petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the non-signing joint inventor.

Applicants here have submitted the appropriate petition fee. Item (1) is therefore satisfied.

Regarding item (2), the petition asserts that the nonsigning inventor has refused to execute the declaration. Before a refusal to execute the application can be claimed, section 409.03(d) of the MPEP requires that the nonsigning inventor be provided with a copy of the complete application, including specification, drawings and claims. The MPEP also requires "a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made."

Here, the evidence submitted to demonstrate Dominique Rebouillat's refusal to execute the application papers is contained in the Second Declaration of Chantal Peaucelle included in the petition, and the exhibits thereto. These materials provide the required firsthand statement regarding the delivery to the nonsigning inventor of a copy of the complete application, and the nonsigning inventor's refusal to execute the application, with documentary evidence supporting the statement. Item (2) is therefore satisfied.

Regarding item (3), applicants have provided the last known address of the nonsigning inventor. Accordingly, item (3) is therefore satisfied.

Regarding item (4), section 409.03(a) of the Manual of Patent Examining Procedure ("MPEP") states that:

An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Here, applicants have filed declarations executed by two of the three inventors and including an unsigned signature box identifying the nonsigning inventor (Dominique Rebouillat). This declaration is treated as having been executed by the available inventors on their behalf and on behalf of the nonsigning inventor. Item (4) is therefore satisfied.

For the reasons stated above, it is appropriate to accept the application without the signature of Dominique Rebouillat under 37 CFR 1.47(a) at this time.

CONCLUSION

The petition under 37 CFR 1.47(a) is **GRANTED**.

As provided in 37 CFR 1.47(c), a notice of the filing of this application will be forwarded to the nonsigning inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being returned to the United States Designated/Elected Office for processing in accordance with this decision.



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